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MINISTRY OF TREASURY, ECONOMICS
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LOCAL GOVERNMENT DIVISION

BULLETIN NO: 2

CONFFLICT OF INTEREST
IN MUNICIPAL GOVERNMENT

THE MUNICIPAL CONFLICT OF INTEREST ACT, 1972,
IS NOW BEING REVIEWED. THIS BULLETIN REFERS
ONLY TO THE ACT AS IT NOW EXISTS, AND NOT TO
ANY PROPOSED OR POSSIBLE CHANGES.

W. DARCY McKEOUGH, MINISTER

A. R. DICK, DEPUTY MINISTER

MARCH 1978

This paper is not an official statement on The Municipal Conflict of Interest Act, but simply a discussion of the terms and extent of the Act. Only a court can determine if a conflict of interest has taken place. This paper points out the dangers to council and board members who are unaware of the Act. If there is a possible conflict of interest, refer to The Municipal Conflict of Interest Act, 1972. The most recent consolidation of the Act is dated March, 1977, and is available, for 75 cents, at the Ontario Government Book Store, 880 Bay Street, Toronto, Ontario, M7A 1N3.

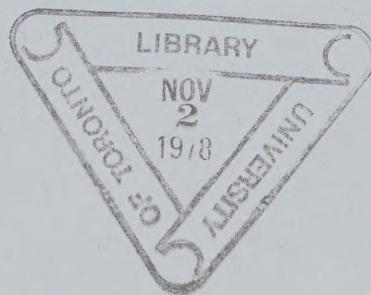


TABLE OF CONTENTS

	<u>PAGE</u>
Introduction	1
What Is A Conflict Of Interest?	2
How Do You Disclose A Conflict Of Interest? ...	2
How Is The Disclosure Recorded?	3
Who Is Responsible For Disclosing The Conflict?	3
What Happens If A Conflict Is Not Disclosed And Recorded?	3
What Are The Penalties?	3

Since all members should be fully aware of The Municipal Conflict of Interest Act, it would be advisable if this bulletin was placed on the agenda of councils and boards. (For additional copies see the back page.)

What Is A Conflict Of Interest?

The Act states that conflict of interest occurs when a member of a council or board, or a company in which the member has a financial interest, enters into a contract with that council or board.

Of course the word "contract" does not mean contracts where the municipality supplies him services that are paid for through taxes or that are services normally billed to residents, such as water or garbage collection.

The conflict occurs not only when the contract is agreed to, but from the time it is first proposed.

The member also has a conflict of interest if a family member or relative living with the council or board member will benefit from a contract with the municipality.

While it is up to the courts to finally determine whether there has been a conflict of interest, it is best for the member of the council or board to disclose a conflict in any dealings in which he or a family member could personally make money or receive financial benefit, directly or indirectly. Cash, therefore, does not even have to be involved. Other forms of "financial gain" could be considered to result in a conflict.

How Do You Disclose A Conflict Of Interest?

As soon as the member is aware of a conflict of interest, he must disclose it to the council or board. The Act says this must be done as soon as practical. In practice, this means it should be done immediately after the council, board or committee meeting has been declared open. It must be done before any discussion or voting takes place on the matter from which the conflict arises.

A member who is absent from a meeting when a contract in which he has a conflict is discussed must disclose the conflict at the next meeting he attends.

The disclosure itself can be short and simple. The individual often states something like, "I declare a conflict of interest on (item) ." Others disclose the nature of the conflict. Some members also feel they should leave the meeting when the item in conflict is being considered.

Introduction

The Municipal Conflict of Interest Act, 1972, requires that all members of municipal councils and local boards must disclose any conflict of interest between their private financial concerns and the council or local board of which they are a member.

The Municipal Conflict of Interest Act states not only that the conflict must be disclosed, but also that the individual must not take part in any discussion or voting on the matter.

If the conflict is not declared the individual can be removed from office and disqualified from running for a seat on a council or board for up to seven years.

Whenever personal business, or a business in which a member has a financial interest, has contracts with the municipal council or local board, the member should disclose a conflict of interest and take no part in the discussion or voting. When there is a doubt, the member should contact his personal solicitor for guidance.

How Is The Disclosure Recorded?

The municipal clerk is required by the Act to record the disclosure in the minutes of the meeting. If the disclosure comes at the beginning of the meeting, it should be recorded at the beginning of the minutes. Since the disclosure must come before any discussion of the contract, it should be recorded in the minutes before any reference to the contract -- other, of course, than the reference in the agenda. Many municipal clerks simply record something like, "Alderman Joe Doe disclosed a conflict of interest on (item)." Some municipalities have drawn up standard resolution forms that include a space for members who have disclosed a conflict on the issue, as well as for those who have voted in favour, against or abstained.

Who Is Responsible For Disclosing The Conflict?

The member of council or local board is personally and solely responsible for disclosing any conflict of interest.

What Happens If A Conflict Is Not Disclosed And Recorded?

If the conflict of interest is not disclosed by the member and recorded by the municipal clerk, a ratepayer can apply to a judge of the county or district court to have the matter heard by the court. The ratepayer must do this within six weeks of hearing about the conflict, and this must be within the current term of the member.

If it is discovered that a conflict should have been disclosed, the contract is not automatically invalidated, but the council or board can void the contract within two years if it wants to.

A disclosure is recognized as having been made when it has been recorded by the municipal clerk in the minutes. If the member neglects to disclose, he can be removed from office. There is no penalty stipulated in the Act for the clerk if he forgets to record it, so the member should be certain that it is recorded.

What Are The Penalties?

A judge of the county or district court may find that the Act has been contravened, and declare the seat of a member to be vacant and may disqualify him from that office for up to seven years.



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